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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6866 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI A PATEL

Versus

COMMISSIONER OF INDUSTRIES

Appearance:

MR VM TRIVEDI for Petitioner

NOTICE SERVED for Respondent No. 1

MS BR GAJJAR, AGP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 14/06/2001

ORAL JUDGEMENT

1. The petitioner has filed this petition under Articles 14, 19 and 226 of the Constitution of India and prayed that respondent No.1-Commissioner of Industries and respondent No.2-General Manager, District Industrial

Centre, Dist.Kheda be directed to pay 15% subsidy to the petitioner i.e. approximately Rs.78,600/- together with interest at the rate of 15% therein and passed any other relief in this behalf.

2. The facts giving rise to this petition are as under:

2.1 The petitioner's firm is a partnership firm situated in backward area. The petitioner's firm started an industry for the production of "Tuti fruti" by purchasing GIDC plot at GIDC Kansari. The said area is falling under backward area and the petitioner is entitled to get cash subsidy to the extent of 15%.

2.2 It has been stated that petitioner's firm is manufacturing "Tuti fruti" from the Papaiya which is considered as fruit products as defined under Fruit Products Order of 1955. The petitioner established that industry and the petitioner received licence from the Government of India on 19.2.81. The said licence has been issued under provisions of Fruit Products Order of 1955. After obtaining the said licence the petitioner started the said industry with effect from 21.2.1985.

2.3 In the petition it has also been stated that the petitioner industry is in the backward area and was eligible for receiving the subsidy. The petitioner's firm was given subsidy Registration No.50 by a letter dated 17.12.1985. The said registration was given by General Manager, District Industrial Centre, Nadiad. It was further submitted that the Government of Gujarat has issued a resolution dated 19th August, 1983, and by virtue of the said resolution the petitioner is entitled to said subsidy. It is further submitted that the petitioner is entitled to receive 15% subsidy which comes to approximately Rs.78,600/-.

2.4 In the petition it was stated that the General Manager, District Industrial Centre - respondent No.2 by his letter dated 9.3.1987 informed the petitioner that the item which the petitioner is producing is covered under the classification of sweetmeat and therefore the petitioner is not entitled to receive the cash subsidy. It appears that the authority has relied upon the provisions of said resolution particularly Annexure `C' which provides that the list of industries not eligible for subsidy. In clause 4 of the said resolution the following products are not eligible for subsidy namely manufacture of ice, ice cream, kulfi, ice candy, ice fruits, sweetmeats and aerated waters. It appears that

the authority has relied upon the said provisions while denying the benefit of subsidy in this behalf.

2.5 Being aggrieved and dissatisfied with the said order, the petitioner has filed present petition before this Court.

3. Shri V.M.Trivedi, learned advocate for the petitioner submitted that the petitioner's item was treated under fruit products and not under the sweetmeat classification and as statutory restriction under the Fruit Products Order, 1955 is applicable and the said licence is obtained from the Government of India. He has further submitted that the petitioner has approached the Central Government by a letter dated 9.8.88 and upon this letter the respondents issued a certificate dated 19.9.88 and declared that the item which the petitioner's firm is manufacturing is classified under the fruit products as defined under Fruit Products Order, 1955. It has also been mentioned in the certificate that the petitioner is holding licence under Fruit Products since 1985 for the manufacture of candied and crystalised fruits and peels and preserves which include Papaya, Murrabba and Tuti Fruity. This item is a fruit products as defined under Clause 2(d) (viii) of Fruit Products Order, 1955.

3.1 In support of the same, he has relied upon the Fruit Products Order 1955 which is issued in exercise of power conferred under the said order. Sec.2(d) of the Fruit Products Order, 1955 provides definition of fruit products means any of the following articles namely:

(i) synthetic beverages, syrups and sherbats.
(ii) vinegar, whether brewed or synthetic.
(iii) pickles;
(iv) dehydrated fruits and vegetables;
(v) squashes, crushes cordials, barley water, barelled juice and ready-to-serve beverages [fruit nectars] or any other beverages containing fruit juices or fruit pulp;
(vi) jams, jellies and marmalades;
(vii) tomato products, ketchup and sauces;
(viii) preserves, candied and crystallised fruits and peels.

3.2 In the petition, the petitioner has also addressed a letter dated 14th March, 1987, to the Commissioner of Industries-respondent No.1 and reiterate his submission that product manufactured by him covered by fruit products and same is not sweetmeat. It appears

that the authority has still not reply in this behalf. The petitioner also stated that he is also entitled to receive subsidy as he got certificate from the Sales Tax authorities and he was being exempted from payment of sales tax for 7 years.

3.3 Learned advocate for the petitioner therefore submitted that the action of the authority denying the benefit of subsidy is arbitrarily, malafide and resulted in stagulation of the young industry which the petitioner has started in the backward area and, therefore, the respondents are required to be directed to pay cash subsidy with 15% interest on the said amount. He further submitted that the Government of India is not treating this item under sweetmeat. Under Fruit Products Order, sweetmeat is not covered and therefore the claim of the respondent no.2 that this item is falling under category of sweetmeat is without any basis without any justification and advanced only with a purpose of depriving the petitioner from getting this cash subsidy.

3.4 Learned advocate for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Pappu Sweets and Biscuits and another Vs. Commissioner of Trade Tax, U.P. Lucknow reported in (1998) 7 SCC 228. In that case the question which was raised before the Hon'ble Supreme Court as to whether toffee is to be considered as sweetmeat or not. After considering various definitions of sweetmeat and also definition of toffees in para 14 the Hon'ble Supreme Court has observed as under:

> "For the aforesaid reasons we are of the view that the High Court has not correctly interpreted and construed Entry 18 of the notification. Considering the object of the notification and the intention of the State Government in granting exemption from payment of sales tax and applying the correct principles of interpretation in such cases, we hold that the word "sweetmeat" and the words "commodities of like nature" as used in the notification dated 27.7.1991 did not include within their sweep toffees manufactured by industrial units as contemplated by the notification and the Joint Directors of Industries, the Tribunal and the High Court were wrong in taking a contrary view. We, therefore, allow both these appeals, set aside the judgments and orders passed by the High Court, and direct the authorities concerned and the State of U.P. to grant the required eligibility certificate and

to extend the benefit of sales tax exemption to the extent lawfully available to them under the notification. In view of the facts and circumstances of the case there shall be no order as to costs."

3.5 Learned advocate for the petitioner has also relied upon Entry 20.01 of the Central Excise Tariff which provides preparations of vegetables, fruit, nuts or other parts of plants.

Heading No.	Sub-heading	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
20.01		Preparations of vegetables, fruit,nuts or other parts of plants, including jams, fruit jellies,marmalades,fruit or nut puree and fruit or nut pastes, fruit juices and vege-table juices, whether or not containing added sugar or other sweetening matter.	
	2001.10	Put up in unit containers and bearing a brand name	16%
	2001.90	Other	Nil

3.6 According to him this entry only relates to the fruit products and no other products and therefore also the sweetmeat and fruit products are quite different in this behalf. Learned advocate for the petitioner has also contended that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it." He has relied upon the judgment in the case of Indo-International Industries Vs. CST reported in AIR 1981 SC 1079 that interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object to raise revenue and for

which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning. That is to say, the meaning attached to them by those dealing in them." He therefore submitted that commercially both sweetmeat and fruit products are quite distinct and different.

3.7 Learned advocate for the petitioner has relied upon the definition of fruit from the Book of S.B.Sarkar's Words & Phrases of Excise & Customs 2nd Edition. The word "fruit" has been defined as the edible, pulpy mass covering the seeds of various plants and trees. They are classified as fleshy, as gourds, melons, oranges, apples, pears, berries, etc; drupaceous and cherries, peaches, plums, apricots, and others containing stones; dry as nuts, capsules, ashenia, follicles, legumes, etc. In flowering plants, the mature seed vessel and its contents, together with such accessory or external parts of the inflorescene seemed to be integral with them. Any vegetable product used as food or otherwise serviceable to man; as grain, cotton, or flax; also such products, collectively: the fruits of the earth. He has also relied upon the definition of Fruit Products Order, 1955 which is page 635 reads as under:

> "Fruit juice shall be the concentrated liquid product expressed from ripe fruit and may contain portions of the pulp and other celluar matter natural to the fruit. Concentrate, squash and crush shall contain fruit pulp. cordials shall be the clear final product prepared by adding sugar to the clarified juice, that is, form which pulp and other cellular matter have been removed. The only substances that may be added of fruit juice or pulp are water, peel oil, fruit essences and flavours, common salt, sugar, invert sugar and/or liquid glucose, ascorbic acid, citric acid, permitted colours and preservatives."

3.8 Learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in the case of Dineshchandra Jamnadas Gandhi Vs. State of Gujarat reported in 1989 (40) E.L.T. 230(SC).

3.9 He has further relied upon the provisions of Fruit Products Order, 1955, issued under Section 3 of

the Essential Commodities Act, the term `fruit products' is defined to mean inter alia squashes and cordials and ready-to-serve beverages.

3.10 In view of the aforesaid contention he has submitted that the product manufactured by the petitioner tutti-frutti from papaya is to be considered as fruit product and it cannot be considered as sweetmeat.

4. On the other hand, Ms.B.R.Gajjar, learned AGP for the respondents has tried to support the order of the authority in this behalf.

5. I have considered the contention of the petitioner, the provisions of the Fruit Products Order, 1955, the submissions made by the learned advocate for the petitioner, the judgment of the Hon'ble Apex Court in the case of Pappu Sweats (supra), also the definition contained in Central Excise Tariff and also the judgment of the Hon'ble Supreme Court in the Indo-International Industries (supra) where the Hon'ble Supreme Court has held that interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning but the terms or expressions used for their popular meaning. I have also considered the view taken by the authority contending that the petitioner is manufacturing as sweetmeat. In my view, the said view is wholly illegal and without any basis and therefore the action of the authority denying the benefit of the petitioner is also bad and illegal. In my view, the fruit products can not be considered by any such as sweetmeat and therefore the entire reasonings of the authority denying the subsidy to the petitioner is illegal and liable to be set aside.

6. I, therefore, issue a writ of certiorari or writ in nature of certiorari for quashing and setting aside the impugned action dated 9th March, 1987, by which the State Government has denied the cash subsidy to the petitioner which has been produced at Annexure `C' to the petition. I further issue writ of mandamus or writ in nature of mandamus directing the authority to consider the case of the petitioner in light of the principle laid down by this Court in the aforesaid judgment and thereby grant necessary subsidy in this behalf. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.M. Mehta, J.)

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